

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To formally reprimand Councilmember Jim Graham for conduct affecting adversely the confidence of the public in the integrity of the government.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Reprimand of Councilmember Jim Graham Resolution of 2013”.

Sec. 2. (a) Inherent in the position of Member of the Council of the District of Columbia is the responsibility to act, at all times, with the highest standards of ethical conduct, honesty, integrity, and impartiality. A Councilmember must act in the public interest. A Councilmember must perform the duties of the office to which he or she is elected in manner that maintains the confidence of the public in the integrity of the District government. A Councilmember must take no action that violates or threatens the public trust. These governing principles are embodied in District statute and regulations, in the Council of the District of Columbia Code of Conduct, and are otherwise incontrovertible to holding elected office.

(b) Section 1801(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01(a)) (“CMPA”), is applicable to Councilmembers. It requires that:

“Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.”

This requirement of law is reinforced in the Council’s Code of Conduct, which states, in part, that: “Councilmembers and staff shall maintain a high level of ethical conduct in connection with the performance of their official duties and shall refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government... .” Rule 202(a) of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 20, Resolution of 2013, effective January 2, 2013 (Res. 20-1; 60 DCR 627) (“Council Rules”).

(c) Section 6B-1803.1(a) of the District of Columbia Municipal Regulations (“DCMR”), providing the employee conduct regulations applicable to all District of Columbia employees, requires:

“An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:

- “(1) Using public office for private gain;
- “(2) Giving preferential treatment to any person;
- “(3) Impeding government efficiency or economy;
- “(4) Losing complete independence or impartiality;
- “(5) Making a government decision outside official channels; or
- “(6) Affecting adversely the confidence of the public in the integrity of government.”

(d) Adherence to the ethical principles underlying these statutes and regulations is vital to maintaining the public trust on which the Council of the District of Columbia operates.

1           Sec. 3. (a) Rule 654 of the Council Rules provides the Council with a formal process for  
2     issuing a reprimand to one of its members “based on a particular action or set of actions that is  
3     determined to be in violation of the Council’s Rules, law, or policy.” A reprimand is a formal  
4     statement of the Council officially disapproving the conduct of one of its members.

5           (b) The Council has a duty to consider reprimanding one of its members when it is  
6     learned that that member acted contrary to the CMPA, the employee conduct regulations  
7     embodied in the DCMR, or the Council Rules. A reprimand should not occur easily, but must be  
8     considered when the Council is embarrassed by a member’s actions, the propriety of those  
9     actions is questionable, and the public confidence in the Council is harmed.

10          Sec. 4. (a) In 2008, while serving as both the Ward 1 representative to the Council of the  
11     District of Columbia and as a member of the Board of Directors for the Washington  
12     Metropolitan Area Transit Authority (“WMATA”), Councilmember Jim Graham was a voting  
13     member in the process of two separate projects, having a vote to approve or reject the underlying  
14     contract for each project. The first was a property development project before WMATA, the  
15     second a lottery contract before the Council.

16          (b) Two distinct companies bidding on each of the contracts, Banneker Ventures seeking  
17     the WMATA development project and W2Tech (which formed a joint venture with another  
18     entity called W2I) seeking to administer the District’s lottery, shared a common principal in  
19     Warren Williams. Councilmember Graham stated repeatedly and publicly his dislike for Mr.  
20     Williams.

21          (c) On or about May 29, 2008, a meeting was arranged between Councilmember Graham  
22     and Mr. Williams, with others in attendance. From the depositions of those present at the  
23     meeting it appears that Councilmember Graham used the occasion to vent his personal issues

1 with Mr. Williams. However, it is alleged that Councilmember Graham also stated at this  
2 meeting his willingness to barter his support. Specifically, that he would support Mr. Williams  
3 for the lottery contract if Mr. Williams withdrew from the WMATA development project.

4 (d) Although Councilmember Graham minimizes the significance of his remark, three  
5 separate reports conclude that the remark was made.

6 (1) In its *Report of Investigation into the Office of the Chief Financial Officer's*  
7 *Lottery Contract Award*, OIG No. 2010-0492 ("OIG Report"), dated January 20, 2012, the  
8 District Government's Inspector General found:

9 "During the course of W2I's meeting with a councilmember, who at the time also  
10 was a member of the board of a quasi-public entity, the councilmember indicated  
11 that he could not or was not inclined to go along with voting for or awarding the  
12 lottery contract to W2I because W2I's participating local partner had been  
13 awarded a contract with the quasi-public entity. The councilmember told W2I  
14 executives that he would support W2I's bid for the lottery contract if its local  
15 partner withdrew from the quasi-public entity's contract because he could not  
16 give the local partner everything." OIG Report at 7.

17  
18 (2) In its *Report of Investigation for the Board of Directors for the Washington*  
19 *Metropolitan Area Transit Authority* ("WMATA Report"), dated October 11, 2012, the law firm  
20 of Cadwalader, Wickersham & Taft LLP found:

21 "Although Councilmember Graham's exact statements at the May 29, 2008  
22 meeting are unclear ... it appears that Councilmember Graham suggested or, at the  
23 very least, implied that he would consider supporting W2I's bid for the lottery  
24 before the D.C. Council only if Banneker Ventures withdrew from the Florida  
25 Avenue Project. Indeed, Councilmember Graham has not outright denied making  
26 the statement, instead positing that he may have said something in passing that  
27 was misinterpreted by the participants of the May 29, 2008 meeting." WMATA  
28 Report at 40.

29  
30 (3) In its *Memorandum Opinion In Re: Jim Graham*, Case No.: AI-002-12  
31 ("BEGA Opinion"), dated February 7, 2013, the District of Columbia Board of Ethics and  
32 Government Accountability (BEGA) stated:

1       “The weight of the evidence supports a finding by substantial evidence that  
2       Councilmember Graham did, in fact, offer to support Mr. Williams and W2I if he  
3       and Banneker Ventures withdrew from the WMATA development project.”  
4       BEGA Opinion at 13.

5  
6       BEGA’s review was based on the WMATA report, the evidence amassed in support of that  
7       report, Councilmember Graham’s written response to BEGA, and the arguments of Mr.  
8       Graham’s counsel before BEGA.

9       (e) The meeting participants, as evidenced by their sworn testimony in depositions and  
10      supported by contemporaneous e-mails and communications, took this to be a *quid pro quo* offer  
11      with regard to the two pending contracts. This understanding is expressed in e-mails to  
12      Councilmember Graham, to which he did not express surprise or make an effort to correct.

13      (f) In addition to his dislike for Mr. Williams, it has also been suggested that  
14      Councilmember Graham sought Banneker Ventures withdrawal from the WMATA development  
15      project because of his preference for another development company, LaKritz Adler.

16      (g) Councilmember Graham’s preference for LaKritz Adler, which was not the  
17      preference of the WMATA Board as a whole, appears initially to have taken the form of his  
18      pressuring Banneker Ventures to withdraw from the project. However, when that appeared  
19      unlikely, Councilmember Graham appeared to pressure Banneker to bring on LaKritz Adler as a  
20      partner and/or purchase LaKritz Adler’s interest in an adjacent property.

21      Sec. 5. (a) Within several days of the May 29<sup>th</sup> meeting, an attorney with Mr. Williams  
22      or W2I sent an email to his clients in which he said, “this is complete bs [sic] and we are getting  
23      very close to corruption, bid rigging, and other inappropriate conduct ... perhaps the us atty [sic]  
24      should make the call on this by speaking with Mr. Graham about his request. Am I clear on  
25      th[i]s. To even consider it is placing each of us at risk. Period.” BEGA Opinion at 11.

1 (b) Councilmember Graham's conduct in relation to the approval process for the  
2 WMATA Florida Avenue development project and the award of the District's lottery contract  
3 prompted three independent investigations:

4 (1) OIG Report: While not the primary scope of the investigation, the Inspector  
5 General evaluated allegations regarding Councilmember Graham's conduct. Although the  
6 Inspector General concluded that he did not find sufficient evidence to support or conclude that  
7 the councilmember acted improperly, he did state that "the councilmember's action, in his  
8 capacity as a councilmember and as a member of the quasi-public entity's board, may give the  
9 appearance that he lost complete independence or impartiality, and may have affected adversely  
10 the confidence of the public in the integrity of government... ." OIG Report at 7.

11 (2) WMATA Report: A report prepared by the law firm of Cadwalader,  
12 Wickersham & Taft LLP at the request of WMATA concluded that "Councilmember Graham  
13 acted in a manner contrary to [WMATA's] Standards of Conduct" in that he "pitted the interests  
14 of the Council of the District of Columbia against the interests of [WMATA], and thereby  
15 unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of  
16 interest" and that he "acted contrary to his duty to appear impartial." As a result, the report  
17 concluded, "Councilmember Graham's action resulted in a breach of his duty to place the public  
18 interest foremost in any dealings involving [WMATA]." WMATA Report at 53.

19 (3) BEGA Opinion: The Memorandum Opinion issued by BEGA on February 7,  
20 2013, based only on a preliminary investigation, concludes that there is a "substantial body of  
21 evidence" suggesting that Councilmember Graham "violated at least three provisions of the  
22 District of Columbia Code of Conduct." BEGA Opinion at 26.

1           Sec. 6. (a) Only last year, legislation was enacted to establish the Board of Ethics and  
2   Government Accountability (D.C. Law 19-124). The committee report accompanying this  
3   legislation makes clear the legislative intent: “to ensure that the ethics reforms contemplated by  
4   this bill will be enforced vigorously and without fear of reprisal or undue influence, the  
5   Committee establishes an independent Board of Ethics and Government Accountability.” Report  
6   on Bill 19-511, the Board of Ethics and Government Accountability Establishment and  
7   Comprehensive Ethics Reform Amendment Act of 2011, December 5, 2011, at 21.

8           (b)(1) The BEGA notified Councilmember Graham, in writing, on November 14, 2012  
9   that it had commenced a preliminary investigation into his conduct as described in the October  
10   11, 2012 WMATA Report. BEGA requested that Councilmember Graham explain: (1) whether  
11   he disputes any of the factual findings contained in the WMATA Report; and (2) whether he  
12   believes his conduct violated the District’s Code of Conduct for employees. BEGA Opinion at  
13   2.

14           (2) Through counsel, Councilmember Graham responded in a letter dated  
15   December 11, 2012 that he disagreed with the core factual finding in the WMATA Report that  
16   he offered to support the bidder’s effort to secure the lottery contract if the bidder simultaneously  
17   withdrew from the WMATA project. He further argued that, even if true, his actions would not  
18   be a violation of the District’s Code of Conduct. BEGA Opinion at 2-3.

19           (c) Importantly, BEGA disagreed. The conclusion of BEGA’s 27 page Memorandum  
20   Opinion is that the allegations do comprise conduct that violates three different provisions in the  
21   District of Columbia Code of Conduct.

22           (d) For jurisdictional reasons, BEGA declined to proceed to a formal investigation, but it  
23   found preliminarily “there to be sufficient evidence to conclude that Councilmember Graham

1 committed one or more violations of the District of Columbia Code of Conduct, justifying a  
2 formal investigation... .” BEGA Opinion at 4. Specifically, the BEGA Opinion states that:

3 (1) Councilmember Graham displayed a complete lack of impartiality in  
4 violation of 6B DCMR § 1803.1(a)(4), as his actions were motivated in significant part by  
5 personal animus against Mr. Williams and a desire to secure a contract for a particular company.  
6 BEGA Opinion at 17-18;

7 (2) Councilmember Graham gave preferential treatment in violation of 6B  
8 DCMR § 1803.1(a)(2), in that he tried to secure a role for LaKritz Adler in the WMATA  
9 development deal months after LaKritz Adler was eliminated from the competition. BEGA  
10 Opinion at 19;

11 (3) Councilmember Graham engaged in conduct adversely affecting the  
12 confidence of the public in the integrity of government in violation of 6B DCMR § 1803.1(a)(6),  
13 by his “sharp-elbowed political behavior.” BEGA Opinion at 19-20.

14 Sec. 7. (a) Councilmember Graham’s actions constitute a clear violation of Council Rule  
15 202(a), which requires that, as a Councilmember, he “maintain a high level of ethical conduct”  
16 and “refrain from taking, ordering, or participating in any official action that would adversely  
17 affect the confidence of the public in the integrity of the District government.” The Council  
18 finds, from the two years of controversy, the three investigations, and widespread public  
19 comments, that Councilmember Graham’s actions have adversely affected the confidence of the  
20 public in the integrity of the District government.

21 (b) It should be noted that, while the violations discussed in this resolution are serious  
22 and a breach of the public trust, there is no indication of criminal conduct by Councilmember  
23 Graham.



1           Sec. 8. To maintain the confidence of the public in the integrity of the legislative branch  
2 of government, the Council expresses disapproval of the conduct of Councilmember Jim Graham  
3 as detailed in this resolution, and hereby reprimands Councilmember Jim Graham for affecting  
4 adversely the confidence of the public in the integrity of government, in violation of D.C.  
5 Official Code § 1-618.01(a), 6B DCMR § 1803.1(a)(6), and Council Rule 202.

6           Sec. 9. The Council shall transmit a copy of this resolution, upon its adoption, to  
7 Councilmember Jim Graham.

8           Sec. 10. This resolution shall take effect immediately.